

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3447 OF 2016
(Bannu Shah S/o Abddul Shah Vs. Raheman Rasul Shah and others)

Mrs.M.R.Jamdhade, Advocate for the petitioner.
Mr.Arun Pandav, Advocate for respondent Nos. 4 and 5.
Mr.D.B.Sadafule and Mr.D.N.Gilche, Advocate for respondent Nos. 2
and 3 (Absent).

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 11/01/2017

PER COURT :

1. The petitioner is aggrieved by the order dated 27/11/2015 by which application Exhibit 22 filed by the petitioner for seeking appointment of the Court Commissioner prior to the framing of the issues, has been rejected. The petitioner has filed RCS No.947/2013 for seeking mandatory injunction and for removing the encroachment from the suit property. There is a complete denial of encroachment by the defendants.

2. This Court (Coram : S.V.Gangapurwala, J.) has concluded in the matter of Ayyaz Shoukatali Sayyed and another Vs. Mohd.Moid @ Ajamatali Mohd.Yasin Shaikh and others in WP No.9089/2011 dtd.17/01/2012 and in the matter of Chandrakant Kashinath Dike and others Vs.Satyabhama Vishwanath Dike and another in WP

No.8877/2013 dated 17/01/2014 that a Court Commissioner cannot be appointed for collecting evidence. After the trial has commenced and after recording the oral evidence, if it appears to the Court that some information is to be elucidated, a Court Commissioner may be appointed. However, the purpose of the appointment of the Court commissioner is never to collect the evidence on behalf of the Court.

3. It requires no debate that any litigating side can file an application for seeking an appointment of a Court Commissioner after the commencement of the trial.

4. In the light of the above, this petition is dismissed. Needless to state, after the commencement of recording of oral evidence, if any litigating side desires to file an application under Order 26 Rule 9 of the CPC, it could do so and the Trial Court would, therefore, consider the said application on its own merits.

(RAVINDRA V. GHUGE, J.)